

HIGHER DEGREE BY RESEARCH (HDR)

RESEARCH COLLOQUIUM 2018



**TC BEIRNE
SCHOOL
OF LAW**

PROGRAM

Friday 27 October 2017
Seminar Room W404, Level 4,
Forgan Smith Building #1

Order of Proceedings

9.00am Registration

9.15am Welcome by Prof Jennifer Corrin (Higher Degree by Research Coordinator)

9.30am Student presentations - Theme I Private Law; Land and Resources
(15-20 mins each, with 10-15 mins discussion)

Chair: Joseph Lelliott

Student Name

Presentation Title

Sarah Asokendaran

Harmonisation of Unconventional Gas Resources Regulatory Frameworks in Australia: Is There a Will or a Way

Andrew Fell

Coherence and Illegality in Private Law

Anne Pickering

Customary Land Tenure: A Key Area for Consideration in Development Opportunities and Challenges in the Pacific Island Countries

11.00 am Morning Tea

11.30am Student presentations - Theme II Intellectual Property
(15-20 mins each, with 10-15 mins discussion)

Chair: Mark Deng

Student Name

Presentation Title

Tad Brown

Intellectual property and peanuts

David James Jefferson

Re-discovering Policy Space for Plant Variety Protection Lawmaking: The Ecuadorian Experience

Jocelyn Bosse

Fragmentation of Biodiscovery Law in Australia?

1.00pm Lunch

1.40pm Presentation – Rachael Pitt, Graduate School: Career Development Framework

2.00 pm Student presentations - Theme III Human Rights

(15-20 mins each, with 10-15 mins discussion)

Chair: Anne Pickering

Student Name **Presentation Title**

Craig Jensen	International obligations and human rights in Australian Extradition
Lorraine Finlay	The Universal Franchise: the Protection of Voting Rights Under the Australian Constitution

3.00 pm Presentation – Thomas Palmer, Law Library: HDRs and the Library

3.15 pm Afternoon Tea and HDR Posters

4.00pm Presentation – Dr Michael Welch, Learning Advisor: Time Management

4.45pm Student presentations IV – Part-Time Candidates Presentations

(15-20 mins each, with 10-15 mins discussion)

Chair: Jocelyn Bosse

Student Name **Presentation Title**

Brooke Thompson	The feasibility of legal pluralism in Australia's secular framework- would the introduction of Sharia Inheritance laws be a viable exception?
Rachel McDonald	A critical review and analysis of the human right and legal entitlement of Australian women to breastfeed on their return to work.

5.45pm Reflection and Wrap-Up

6.00pm Drinks and Presentation of Awards (Level 3 Sir Gerard Brennan Room)

7.00pm Colloquium Concludes

Abstracts and Presenter Biographies

Sarah Asokendaran

Interstate Harmonisation of Underground Water Regulatory Frameworks For Unconventional Gas Resources Through Statutory Water Plans

There is currently no interstate harmonisation of underground water regulatory frameworks within the unconventional gas resources (UGR) industry within Australia. The UGR industry, consisting primarily of coal seam gas, shale and tight gas, often requires the taking of underground water to be used in the process of hydraulic fracturing.

Differing geological characteristics and regulatory approaches between states; as well as a parochial approach to regulating water resources makes harmonisation of regulatory frameworks challenging.

The consequence of this lack of harmonisation is overlap of regulations, duplication of compliance; and general lack of clarity and consistency. For interstate resource projects, this can lead to delays and significant increases in costs. Project proponents must bear the impact of delays and costs; and governments experience a corresponding loss of revenue due to loss of associated royalties and taxes.

To encourage states to voluntarily harmonise, incentives that are realised through economic considerations are required. The development of cross-boundary projects (e.g. the Cooper Basin, the Murray-Darling Basin, the Georgina Basin) requires states to utilise water resources in a manner that will optimise economic outcomes while ensuring the sustainability of water resources.

It is proposed that through the harmonisation of the states' statutory water plans, a more holistic approach to regulating underground water for the taking and use in hydraulic fracturing for UGR projects can be achieved. The benefit of doing so is that states retain their individual approach to regulating while achieving a unified result.

This paper analyses the regulatory frameworks of statutory water plans in South Australia, Queensland and the Northern Territory with reference to the Cooper Basin. Specifically, it compares regulation in relation to the taking and use of underground water for hydraulic fracturing; draws a comparison of the similarities and dissimilarities between states regulatory frameworks; and through the lens of economic incentive and sustainability, suggests reasons that harmonisation through statutory water plans will present a long-term solution to current regulatory challenges.

Biography:

Sarah is a PhD candidate at the T C Beirne School of Law, University of Queensland. Sarah's research interests include oil and gas regulatory frameworks of governments, specifically in relation to underground water used in the process of hydraulic fracturing.

Jocelyn Bosse

Fragmentation of Biodiscovery Law in Australia

Australia has longstanding international obligations to enact access and benefit sharing laws, which aim to prevent the unauthorised collection and commercial exploitation of biological resources. Rather than providing a clear framework for scientific research and commercialisation, however, the legislative response across the Commonwealth, States, and Territories has been fragmented. With reference to the case study of spinifex research, this presentation will evaluate the *Biodiscovery Act 2004* (Qld) and *Biological Resources Act 2006* (NT), and will use Braithwaite's regulatory pyramid of enforcement to suggest avenues for harmonisation.

Biography:

*Jocelyn is a PhD candidate at the T C Beirne School of Law, University of Queensland. Jocelyn completed her undergraduate studies at the University of Queensland, where she obtained dual Bachelors of Science/Laws (Honours) with a concurrent Diploma of Languages (French). During her science studies, she conducted three undergraduate research projects in plant biology and agricultural science and graduated from the UQ Advanced Study Program in Science (ASPinS). Her interests are in the areas of intellectual property, public international law, and the law of the World Trade Organization (WTO). Jocelyn is a researcher in the ARC project, 'Harnessing Intellectual Property to Build Food Security'. Her project examines the implementation of access and benefit sharing laws in Australia, pursuant to Article 8(j) of the United Nations Convention on Biological Diversity 1992. It includes a detailed review of the biodiscovery frameworks in the States, Territories and Commonwealth, in light of the pressures for Australia to ratify the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. The thesis will then explore access and benefit sharing regulation in the context of two case studies of partnership with Indigenous communities: the scientific and commercial research about Kakadu plum (*Terminalia ferdinandiana*) and spinifex grass (*Triodia pungens*). Ultimately, the hope is to move beyond dichotomous thinking, to reconceptualise issues of access to and use of genetic resources in a manner that might promote food security, diffuse agricultural innovations, and ensure protection of the interests of both providers and users of resources and associated knowledge.*

Tad Brown

Intellectual Property and Peanuts

What can peanuts tell us about intellectual property? Rather than take a broad domain of intellectual property—patents, plant variety protection, trademarks, copyright, or trade secrets—and study its relationship to agriculture or a food product, I am choosing to focus on the peanut, asking how the ownership of intangibles has worked to translate the crop across the commodity chain. Presuming the peanut as a stable material thing becomes a problem when considering whether or not there is correspondence between the physical object and its engagements with the law, not in general but at various points of production. Here, I adopt a historical perspective and approach the study of intellectual property in terms of what it does or has done to specific peanuts. The talk will cover the sourcing of germplasm, breeding, farming, processing, packaging, and the selling of peanuts.

Biography:

Tad is a PhD candidate at the T C Beirne School of Law, University of Queensland. Brown is studying the interaction between intellectual property rights and peanuts. His previous areas of study include history and anthropology, focusing on agriculture, rural development, and agrobiodiversity conservation. Tad has done work in The Gambia, West Africa and Georgia, USA, and will be extending his current research to include peanut disputes in Queensland, Australia. Tad eats salted peanuts nearly every day.

Andrew Fell***Coherence and Illegality in Private Law***

For more than a century, courts have struggled to identify a satisfactory basis for determining whether a plaintiff's claim is defeated because of their illegal conduct. Historically, statements can be found to the effect that illegality in the circumstances giving rise to liability provides an automatic bar, but on the whole this view has been rejected. Nevertheless, it has been consistently recognised that illegality can sometimes negate what is otherwise a valid claim, although there has been disagreement about when it will have this effect. In recent times, final appellate courts in Australia, Canada and the UK have all identified the need to preserve the coherence or consistency of the law as the basis of the illegality doctrine. Notwithstanding this agreement, there remain substantial, lower-level differences between them in applying the concept of 'coherence'. I will examine these different approaches, and identify which provides the best understanding of the notion of coherence in the law.

Biography:

Andrew is a PhD candidate at the T C Beirne School of Law, University of Queensland. Andrew graduated with an LLB from the University of Queensland in 2015, and commenced his PhD in 2016. His research examines the concept of 'coherence in the law', as relied on by the High Court of Australia. It seeks to understand this concept and identify its possible normative foundations. He is interested in all aspects of private law and general legal theory, and has a sideline interest in moral philosophy and the nature of reasons.

Lorraine Finlay***The Universal Franchise: the Protection of Voting Rights Under the Australian Constitution***

This thesis proposes to examine voting rights under the Australian Constitution and, in particular, to consider the extent to which the universal franchise is constitutionally protected. The research will trace the historical development of voting rights in Australia (from the time of Federation through to the present) and will consider recent High Court decisions on the subject, focusing particularly on *Roach v Electoral Commissioner* and *Rowe v Electoral Commissioner*. The thesis will examine the current position with regards to any constitutional protection of voting rights in Australia, and will evaluate the criticisms that the recent *Roach* and *Rowe* decisions are expansive decisions that have undermined parliamentary sovereignty by moving beyond the original conceptions of voting rights that the drafters intended to enshrine in the Constitution.

Biography:

Lorraine is a PhD candidate at the T C Beirne School of Law, University of Queensland. Lorraine has been a law lecturer at Murdoch University since 2010. She currently lectures in Constitutional Law and International Human Rights Law, and is also the Director of the Moot Program. Before joining Murdoch University Lorraine worked as a State Prosecutor at the Office of the Director of Public Prosecutions (WA) and at the High Court of Australia as the Legal Research Officer and then as an Associate to The Hon. Justice J D Heydon. In 2009 she was selected as a Singapore Scholar with the NYU@NUS program and was awarded a dual LL.M from New York University and the National University of Singapore. Lorraine's PhD examines voting rights under the Australian Constitution and the extent to which the universal franchise is constitutionally protected. In addition to constitutional law, Lorraine's research interests include criminal law, international criminal law and public international law.

David J Jefferson

Re-Discovering Policy Space For Plant Variety Protection Lawmaking: The Ecuadorian Experience

The global landscape of intellectual property law changed dramatically in 1995. That year marked the finalisation of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, a treaty to which members of the World Trade Organization must adhere. Among other minimum standards that TRIPS establishes, the Agreement requires that World Trade Organization members protect plant varieties as intellectual property in their domestic laws. Subsequently, numerous bilateral and multilateral free trade agreements have increased the TRIPS minimum standards, including in ways that affect plant variety protections. These international instruments have prompted negative reactions from scholars, policymakers, and civil society activists, who have decried the imposition of international constraints on domestic legislative imaginaries.

Yet at the same time, some prominent experts optimistically claim to have elucidated “policy space” that remains latent yet available in these international legal regimes. The quest for hidden flexibilities, for lacunae in which national-level lawmakers might innovate, has inspired prior proposals for how to maximise the policy space for intellectual property lawmaking that exists under the TRIPS Agreement. However, many of these analyses fail to take into account that the space available to numerous countries has been further reduced by bilateral and multilateral trade agreements.

In my doctoral research, I elucidate various options available to countries to creatively interpret the TRIPS requirement to enact intellectual property laws for plant variety protection. In so doing, I explore sets of possibilities for two categories of countries. On the one hand are options for countries that enjoy broad policy space, subject only to the requirements of the TRIPS Agreement. On the other are opportunities for countries whose policy space is narrow, due to the requirement that these States also comply with obligations delineated in other bilateral or multilateral agreements.

My project builds upon the case study of Ecuador, whose policy space is narrow because the country has entered into several international agreements in addition to TRIPS. In my research, I focus on the recent drafting and implementation of a comprehensive new framework for plant variety protection in Ecuador. In particular, my work considers how the new Ecuadorian regime has taken advantage of available flexibilities, while also identifying areas in which lawmakers’ ability to innovate was curtailed by international obligations.

Additionally, I seek to build upon prior proposals that have been launched for the utilization of policy space, which have focused on options available at the level of legislation (e.g., Correa 2015; Helfer 2004). In my work, I engage with these precedents while also delving deeper, shifting the point of inquiry from the legislative to the administrative realm. Thus, I focus on how regulations might be exploited to create plant variety protection systems that would be adapted to local realities, to protect the rights of a variety of national stakeholders. This research is intended to inform future lawmaking efforts, to ensure that countries are able to simultaneously protect domestic interests and uphold international obligations.

Biography:

David is a PhD candidate at the T C Beirne School of Law, University of Queensland. David’s PhD project examines the theory, motivations, objectives, and expected impact of the new draft Ecuadorian intellectual property (IP) law, which is entitled the “Organic Code for the Social Knowledge and Innovation Economy of Ecuador” (the “Código Ingenios”). David’s research focuses especially on components of the Código Ingenios that are relevant to Andean agricultural practices, food sovereignty, and traditional knowledge. However, the project also broadly investigates how the Código could represent a redefinition – or reconceptualisation – of legal frameworks granting intellectual property rights, both within Ecuador, regionally, and internationally.

David holds a Juris Doctorate (JD) degree from the University of California and a Masters of Arts in Community Psychology from Suffolk University. David has conducted work in the area of intellectual property law for several years, including under the auspices of a United States Fulbright Scholar grant, and as a Law & Policy Analyst with the Public Intellectual Property Resource for Agriculture (PIPRA), based at the University of California, Davis. David has lived in worked in multiple countries, but has a particular interest in Latin America.

Craig Jensen

International Obligations and Human Rights in Australian Extradition

(Abstract)

Biography:

Craig is a PhD candidate at the T C Beirne School of Law, University of Queensland.

Rachel McDonald

Breastfeeding At Work: A Critical Review of Australia's Laws and Practice

This presentation provides an overview of my thesis and its findings which critically reviews the federal legal regimes that regulate women in employment who breastfeed. As more women than ever before return to work after having a baby the issue of breastfeeding at work is gaining momentum. In Australia women have no clear laws to definitely assert an entitlement to be accommodated with access to guaranteed paid breastfeeding breaks, hygienic facilities, and risk assessments to ensure safe and healthful working conditions that enable them to continue breastfeeding. Such entitlements are international labour standards recommended by the International Labour Organisation in its *Maternity Protection Convention* (1919,1952 and 2000) of which Australia has never ratified.

Without clear laws breastfeeding workers may be disempowered, uncertain about what to expect, and have their breastfeeding embodied practice, that is their bodily functioning, decided by others at their whim – ie management in the provision of, or denial of, breastfeeding accommodations.

Specifically, the anti-discrimination laws, employment laws and work health and safety laws are examined including the *Sex Discrimination Act 1984*, the *Fair Work Act 2009* and the *Work Health and Safety Act 2011*.

Biography:

Rachel is soon to complete her PhD in Law with the TC Beirne School of Law, examining the legal issues that impact breastfeeding workers in Australia. She qualified as a barrister and solicitor in 1995 and has worked in both capacities for the Commonwealth Attorney-General's Department and the Office of the Australian Government Solicitor. As a Breastfeeding Counsellor with the Australian Breastfeeding Association, Rachel became interested in the workplace rights of women to breastfeed. In 2015 she appeared before the Productivity Commission on this issue and in 2016 she appeared before the ACCC and also organised, and presented at, the inaugural Breastfeeding Advocacy Australia conference of which is a national group that Rachel has co-founded. Rachel has recently presented at the United Nations International Labour Organization conference on Regulating Decent Work, focussing on maternity protection including breastfeeding laws. On behalf of the ABA, Rachel has been liaising with the Queensland Anti-Discrimination Commission to produce a 'Know Your Rights' Factsheet and card for women who breastfeed at work and in public.

Anne Pickering***Customary land tenure: A key area for consideration in development opportunities and challenges in the Pacific Island countries***

In 2017, the World Bank launched a report *Pacific Possible*, which lays out a series of transformative opportunities that exist in the Pacific Island Countries (PICs) and challenges requiring immediate action. Although, the majority of *Pacific Possible* key areas require some form of access to property, these do not identify that customary landholding is common in PICs and that customary land tenure is an essential area that needs to be considered when exploring development initiatives for PICs. In order to illustrate the need for customary tenure to be considered as an essential area, using the Solomon Islands and Vanuatu as examples, this presentation will examine some opportunities identified by *Pacific Possible*. The purpose of this presentation is to highlight the importance of customary land tenure and to illustrate that opportunities for development in PICs must not be considered in isolation of customary land tenure issues.

Biography:

Anne is a PhD candidate at the T C Beirne School of Law, University of Queensland where she tutors in Property Law B. She has practised as a solicitor, having most recently worked for the Queensland Law Society and the Legal Practitioners Admissions Board. Anne was awarded the Hernando de Soto fellowship in 2008 to complete the International Property Rights Index of 2009: a study of global data in property rights to examine the correlation between secure property rights and economic development. She has presented several papers and written a book chapter (due to be released in December 2017, Cambridge University press).

Brooke Thompson***The Feasibility of Legal Pluralism in Australia's Secular Framework – Would the Introduction of Sharia Inheritance Laws Be A Viable Exception?***

In March 2013 the Inquiry into Migration and Multiculturalism in Australia was tabled. In response to over one hundred submissions received by the Joint Standing Committee on Migration, an entire chapter of the Inquiry is dedicated to discussion of the compatibility of Australia's legal system with Sharia law. The Committee was urged to consider three core areas: family law, succession and Halal certification. This speech discusses the methodology and theory behind an investigation into Islamic inheritance law in Australia. It also provides an overview of the Islamic succession system and the findings of a comparative analysis of Australia's inheritance laws and Islamic inheritance laws.

Biography:

Brooke is a PhD candidate at the TC Beirne School of Law and a Research Scholar with the Centre for Public, International and Comparative Law. Brooke's PhD project examines the extent to which Islamic inheritance laws may be efficaciously recognised within the Australian legal system. The project examines Muslim behaviour that indicates a desire for formal accommodation of Islamic inheritance law, comparatively analyses the interaction with and conflict of the Islamic succession law system with the Australian (state-based) inheritance laws, and investigates how other common law countries manage Muslim communities' (their desire for and often practical use of their own) inheritance laws. The project looks specifically at India, Canada and the United Kingdom.

Brooke completed a Bachelor of Laws at the University of Queensland and was admitted as a solicitor of the Supreme Court of Queensland and the High Court of Australia. Brooke practised as a banking and finance solicitor at Corrs Chambers Westgarth, where she was also involved in the Middle East Practice Group before moving to a career advertising and publishing. In addition to Islamic law, Brooke is interested in the areas of religious law, legal pluralism, multiculturalism and minority communities in Australia.